

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 15-CR-0120 (PJS/LIB)

Plaintiff,

v.

ORDER

SEAN GERALD PENONCELLO,

Defendant.

Laura M. Provinzino and Benjamin F. Langner, UNITED STATES ATTORNEY'S OFFICE, for plaintiff.

Craig S. Hunter, NORTHLAND LAW, for defendant.

For the reasons stated on the record at the September 18, 2015 hearing, IT IS
HEREBY ORDERED THAT:

1. Plaintiff's motion in limine [ECF No. 48] is GRANTED IN PART and DENIED IN PART.
 - a. Defendant is precluded from mentioning, in the presence of the jury, the potential punishment defendant may face if convicted.
 - b. Defendant is precluded from offering evidence of his own out-of-court statements, unless the Court rules, following a bench conference out of the hearing of the jury, that such a statement is admissible under an exception to the hearsay rule or is being offered for a non-hearsay purpose.

- c. All potential witnesses are sequestered pursuant to Fed. R. Evid. 615 except for defendant and the government's case agents.
 - d. The government may introduce evidence of defendant's possession of additional images and videos beyond the files specifically identified in the superseding indictment and defendant's recording of videos at the AmericInn.
 - e. Before offering evidence concerning a witness's bad acts in the presence of the jury, the parties must first, outside the presence of the jury, provide the Court with a basis for inquiry.
 - f. Pursuant to Fed. R. Evid. 412 and 403, defendant is precluded from offering evidence concerning any witness's other sexual behavior or sexual predisposition.
 - g. Defendant may offer an alibi defense.
2. Plaintiff's motion in limine [ECF No. 64] is GRANTED IN PART and DENIED IN PART.
- a. Defendant is precluded from offering out-of-court statements that he told his mother that his dog had bitten someone and that he was concerned about the legal ramifications, unless the Court rules, following a bench conference out of the hearing of the jury, that

such a statement is admissible under an exception to the hearsay rule or is being offered for a non-hearsay purpose.

- b. Defendant may offer character evidence that he acts appropriately toward minors and that he is law-abiding. He may not offer character evidence that he is honest, unless he testifies and his character for truthfulness is attacked.
- c. The government may cross-examine defendant's character witnesses about whether they are aware that defendant secretly videotaped women and children in an AmericInn bathroom.
- d. The government may cross-examine defendant's character witnesses about the crimes alleged in the superseding indictment.
- e. The government is precluded from cross-examining defendant's character witnesses about defendant being subject to a restraining order, defendant being fired from a job for sexually harassing a coworker, and defendant engaging in a sexual relationship with a married woman.
- f. The government is precluded from cross-examining defendant's character witnesses about defendant being found in violation of an order for protection, unless the Court rules, following a bench

conference out of the hearing of the jury, that the government can inquire about that matter.

- g. The government may cross-examine Carrie Wold about her attempt to arrange a straw purchase of a firearm.
 - h. The government is precluded from cross-examining Roland Bennett about his 1981 conviction for aggravated forgery.
- 3. Defendant's motion in limine [ECF No. 50] to exclude the government's expert-witness testimony is DENIED AS MOOT in light of the parties' resolution of that issue.
 - 4. Defendant's motion in limine [ECF No. 57] to permit defendant to assert and present evidence of an alibi defense is GRANTED.

Dated: September 21, 2015

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge